

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JODY S. GIRK f/k/a</b>	)	
<b>JODY S. MOURNING</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>THE BOEING COMPANY</b>	)	
Respondent	)	Docket No. 233,140
	)	
AND	)	
	)	
<b>INSURANCE COMPANY OF THE</b>	)	
<b>STATE OF PENNSYLVANIA</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier (respondent) requested review of the December 22, 2006, Post Award Order entered by Administrative Law Judge John D. Clark. The Board placed this matter on its summary docket for a determination without oral argument.<sup>1</sup>

**APPEARANCES**

David H. Farris, of Wichita, Kansas, appeared for the claimant. Eric K. Kuhn, of Wichita, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the agreed Award filed May 12, 1999, together with the transcript of the Post Award Hearing dated July 11, 2006; the evidentiary deposition of Paul S. Stein, M.D., dated October 25, 2006; and the pleadings and other documents contained in the administrative file.

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<sup>1</sup> For purposes of K.S.A. 44-551(b)(1), January 30, 2007, the day following the date the last brief was due, is the date arguments were presented to the Board.

### ISSUES

The Administrative Law Judge (ALJ) awarded claimant post award medical treatment and ordered that Dr. Bradley Bruner be authorized as claimant's treating physician.

Respondent requests that the Board reverse the ALJ's Post Award Order, arguing that claimant did not prove that her current complaints of pain are directly related to her previous knee injury at respondent.

Claimant requests that the Board affirm the order of the ALJ. Claimant also requests post award attorney fees in the amount of \$375 for services claimant's attorney performed in the appeal of this post award medical proceeding.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

Claimant injured her right knee by a series of accidents beginning on March 11, 1998, and continuing through April 2, 1998, while working for respondent as a sheet metal assembler. Claimant settled her claim in May 1999, leaving her right to medical treatment open. In August 1999, she stopped working for respondent, and in December 1999 she began working for Wal-Mart. She stated that as of the last day she worked for respondent, she had no permanent restrictions on her activities due to her knee. However, in respondent's Exhibit A to the agreed Award, which was approved by Judge Clark on May 12, 1999, Dr. Bradley W. Bruner states:

She is doing her current job fairly well but I think with the ability to work for a while and stop for periods of time it does accommodate her knee quite well. Currently she has trouble with squatting and kneeling, going down stairs, when she lands on the lf. and loads up the rt., but going up stairs is not as painful. Standing 6 hours begins to cause some discomfort. Running and jogging is painful and very long walking causes discomfort. She tolerates her job well. Her parking restrictions have been changed to regular parking. I currently gave her no restrictions. I think from all of the things she cannot do she has a 7% permanent partial disability to the knee. I would like to leave her without restrictions, but I think she has this amount of disability due to the activities she cannot do and scar tissue after resection of the plica, the discomfort from the arthroscopic portals. I will see her back only as necessary.<sup>2</sup>

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<sup>2</sup> This entry by Dr. Bruner is undated. But Dr. Stein's report indicates that claimant was released by Dr. Bruner on January 6, 1999, or January 26, 1999. Stein Depo., Ex. 2 at 1-2.

Claimant continues to work for Wal-Mart as a stocker. She admits that in her current job she is standing or walking for eight hours a day. She also admits that after spending eight hours on her feet either standing or walking, she has additional pain. However, she testified she had done nothing to worsen her condition as it pertained to her knee.

Claimant testified that her right knee problem never really went away. It continued to bother her after she left her job at respondent, especially in cold and damp weather. However, she stated that more recently she has had additional aching and pain in her knee, and sometimes the knee pops when she is walking.

After the post award hearing, claimant was seen by Dr. Paul Stein, a board certified neurosurgeon, at the request of respondent. Dr. Stein was given claimant's history of treatment with Dr. Bruner, who had performed arthroscopic surgery on claimant's knee in June 1998. Claimant also told Dr. Stein about her job duties at Wal-Mart. Upon examination, Dr. Stein found that claimant had tenderness along the medial of the right knee. He found no swelling, and claimant had good range of motion in her knee. He found mild crepitus or crinkling to palpation with motion in both knees.

When asked about the cause of claimant's current complaints, Dr. Stein testified: "Based on the information currently at hand, it was my opinion that her current symptoms are more likely related to the previous injury than they are to her work at Wal-Mart."<sup>3</sup> Dr. Stein stated he would attribute the fact that claimant has more discomfort at the end of the workday to the fact that she is on her feet all day. However, he had no evidence of any structural injury to her knee from working at Wal-Mart. Dr. Stein opined that the fact that claimant has increased symptoms does not mean that she has a permanent aggravation. Her symptoms may be a normal progression of her previous injury. He further stated that "unless I see some additional evidence, I think the assumption has to be more likely than not it's the original problem that is still causing the trouble."<sup>4</sup> He added that although claimant's work at Wal-Mart may cause claimant to be more symptomatic, he did not have any evidence that her structural problems are related to her work at Wal-Mart. Dr. Stein concluded his report by recommending "consultation with Dr. Bruner for his more experienced orthopedic examination as well as MRI scan of the knee joint."<sup>5</sup> He added that his opinion might change after claimant is given an orthopedic evaluation and an MRI scan, "if a definitive diagnosis can be made."<sup>6</sup>

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<sup>3</sup> Stein Depo. at 9.

<sup>4</sup> *Id.* at 14.

<sup>5</sup> *Id.*, Cl. Ex. 2 at 4.

<sup>6</sup> *Id.*

Both claimant and Dr. Stein relate claimant's current condition and need for treatment to her work-related injury with respondent. There is no contrary opinion. Respondent would have the Board speculate and surmise that because of the passage of time and claimant's subsequent work activities with another employer, there must have been an intervening accident or that the recurrent symptoms otherwise establish a new injury. Claimant's symptoms have increased while working at Wal-Mart. Nevertheless, the greater weight of the evidence in this limited record supports the ALJ's conclusion that claimant's present condition is a natural consequence of her original injury with respondent of March 11, 1998, through April 2, 1998.<sup>7</sup>

Claimant's request for additional attorney fees should be presented to the ALJ.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated December 22, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February, 2007.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David H. Farris, Attorney for Claimant  
Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge

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<sup>7</sup> See *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).